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In the Supreme Court of the United States

No. 600

OCTOBER TERM, 1955.

THE GRAND INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

Petitioner,

vs.

W. H. MOUNT,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit.

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PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

Your Petitioner, Grand International Brotherhood of Locomotive Engineers, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered by that Court in this cause on October 31, 1955.

OPINIONS BELOW.

The opinion of the Court of Appeals is not yet officially reported. A copy of that opinion is set forth in the Appendix hereto, page 19. The oral opinion of the District Court is not officially reported. A copy thereof is found at pages 9b-11b of the Certified Record, and copies thereof filed herein.

JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit, as to which review is sought herein, was dated and entered October 31, 1955. It is set forth in the Appendix hereto, page 26. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTION PRESENTED.

Whether a federal court has jurisdiction to hear and decide an action, as one arising under the Constitution or laws of the United States, seeking to enjoin a craft representative under the Railway Labor Act from negotiating with a carrier a proposed change in working conditions, which proposed change is relevant to the purposes of the collective agreement and craft employment and was adopted by the craft representative labor organization after due consideration and action taken in its established tribunals, where plaintiff (respondent), a member of the labor organization, alleges that such organization action and decision are in violation of the laws of the organization and if placed in effect on the carrier would affect him adversely and discriminate against him, and where the entire basis of the claim of such member is concerned only with compliance with the organization's laws in a controversy between two of the organization's lodges.

STATUTES INVOLVED.

28 U. S. C. § 1331:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

28 U. S. C. § 1337:

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

Railway Labor Act, 45 U. S. C., Sections 151, 152, in part. The pertinent parts are set forth in the Appendix hereto, p. 26.

STATEMENT OF THE CASE.

Proceedings. The complaint herein was filed in the United States District Court for the Western District of Tennessee. The respondent alleged that jurisdiction existed "under and by virtue of Title 28, Sections 1331 and 1337, and Title 45, Sections 151 and 152, Code of the United States," which statutes are set forth or referred to in the preceding section hereof. Petitioner's contention is that none of these statutes confers jurisdiction on the District Court in this case. In its answer filed in the District Court petitioner alleged as its third defense that the Court lacked jurisdiction of the subject matter of the action, in that "the complaint presents no question arising under the Constitution and laws of the United States," and that there was no diversity of citizenship. Following argument before trial upon this defense, the Court dismissed the complaint upon the ground that the Court "lacks jurisdiction of the subject matter of the action, in that the complaint presents no question arising under the Constitution and laws of the United States, and there is no diversity of citizenship between plaintiff and defendant." (R. 6a.)

In the oral opinion the District Judge said:

"* * * this is a controversy within the ranks of the defendant Brotherhood. It is not a dispute as, for in-

> stance, between the Brotherhood and the carrier over a bargaining agreement which is usually considered under the Railway Labor Act. * * * It seems to be a fight * * * between the two Divisions of the Brotherhood, which should be, in the Court's opinion, settled within the framework of the Brotherhood organization." (R. 10b.)

Respondent appealed to the United States Court of Appeals for the Sixth Circuit, which entered judgment on October 31, 1955, reversing the District Court. (Appendix page 26, *infra.*) No question of diversity of citizenship was involved in the appeal.

Facts. Petitioner, Grand International Brotherhood of Locomotive Engineers, commonly referred to as the Brotherhood of Locomotive Engineers and hereinafter sometimes referred to as "Brotherhood," is a voluntary unincorporated association and is a labor organization whose members generally are employed as locomotive engineers on various railroads of the United States. (R. 9a.) The General Committee of Adjustment of the Brotherhood of Locomotive Engineers on the Gulf, Mobile & Ohio Railroad is the craft representative under the Railway Labor Act (45 U. S. C. 152, Fourth) of the locomotive engineers employed on that Railroad. Division 444, located at East St. Louis, Missouri, and Division 666, located at Jackson, Tennessee, are two local lodges of said Brotherhood. The General Committee of Adjustment on the G. M. & O. Railroad is composed of one representative from each of the eleven Divisions of the Brotherhood located on the various territories of that Railroad. (R. 10a, 43a.)

A portion of the present G. M. & O. Railroad extends from East St. Louis, Illinois, through Murphysboro, Tamms and Cairo, Illinois, to Jackson, Tennessee, and thence fur-

ther south to the Gulf Coast. The seniority district of the engineers of Division 444 (Murphysboro District) extends from East St. Louis to Cairo, and the seniority district of the engineers of Division 666 (Jackson District) from Cairo through Jackson to Okolona, Miss. Since 1906 there has been in effect Article 11(d) of the collective bargaining agreement with the carrier (R. 25a, 26a) resulting from the so-called Cairo agreement of the General Committee (R. 24a, Ex. 3), under which the engineers from the Jackson District have operated the freight service on the Murphysboro District from Cairo to Tamms, a distance of 18 miles. This condition arose out of a change by the carrier in moving a terminal from Cairo to Tamms. (R. 12a.) This condition has been one of dissatisfaction from the standpoint of the engineers of Division 444 ever since that time, and numerous efforts have been made by Division 444 to recover jurisdiction of this territory (R. 13a, 14a). The instant case arises out of action taken within the Brotherhood which restored this territory to Division 444. The job of only one engineer is involved, and respondent Mount, an engineer on the Jackson District and a member of Division 666 of the Brotherhood, alleges that he would be adversely affected if the questioned ruling is placed in effect. (R. 19a.) No agreement has been entered into between the G. M. & O. and the General Committee to place in effect the Brotherhood decision, but respondent alleges (R. 21a) that the General Committee has notified respondent that "it will negotiate an agreement to place such decision in effect," and that, "on information, plaintiff (respondent) alleges that the Railroad will accept the proposed modification or change" in the contract. (R. 21a.)

The immediate succession of events which underlie the instant controversy began in 1947 when the General Chairman of the General Committee of Adjustment, act-

ing as the executive head of the Committee between sessions of the Committee, ruled that the Murphysboro District was entitled to the mileage between Tamms and Cairo. (R. 15a, 28a, 29a.) From this ruling an appeal was taken by referendum vote to the members of the Brotherhood on the G. M. & O. Railroad (R. 15a), which vote favored the Jackson District, Division 666, engineers. It is alleged that the Brotherhood law concerning the referendum vote provides that such referendum vote "shall be final." Division 444 appealed from this ruling to the Grand Chief Engineer, or chief executive, of the Brotherhood as to its legality, and this appeal was denied (R. 12a), and from the ruling of the Grand Chief Engineer, Division 444 appealed to the Triennial Convention, known as the Grand International Division or G. I. D., of the Brotherhood held in the year 1950. The Grand International Division is the "supreme governing body of the Brotherhood," and has "exclusive jurisdiction over all subjects pertaining to the Brotherhood, and its enactments and decisions upon all questions shall be the supreme law of the Brotherhood, and all Divisions and members of the organization shall render true obedience thereto." (R. 1b, 16a.) The appeal was accepted by the Convention and referred to an Appeal Committee. (R. 16a.) After consideration of the appeal the Committee made its report to the Convention, the pertinent portion of which is as follows:

> "SUBJECT OF APPEAL—GM&O RR regarding dispute over trackage rights between Cairo and Tamms, Illinois.
>
> "We, your Committee, find that this case resolves itself into a matter concerning the G. C. of A. on the property of the GM&O Railroad.
>
> "This committee sustains decision of the Grand Chief Engineer and recommends that this matter be

referred back to the G. C. of A. on this property for further handling."

The report and recommendation of the Appeal Committee were approved and adopted by the Convention. (R. 38a, 42a.) No exception or complaint is made by respondent concerning the propriety of this action of the Convention. On the contrary, he relies on it but complains of the construction thereof by the General Committee of Adjustment and the Grand Chief Engineer. (R. 16a, 19a, 49a.)

The decision of the Convention was made in June of 1950. The most significant part thereof is that the controversy was "referred back to the G. C. of A. (General Committee of Adjustment) on this property *for further handling.*" The General Committee first met in regular session after the Convention in St. Louis in April 1953. (R. 17a.) Pursuant to the Convention action the General Committee took up the matter of the further handling of the controversy. Each of the involved Divisions, 444 and 666, had a member on the Committee (R. 10a) and all members of the Committee were present. (R. 43a.) The minutes of the meeting are set forth in Exhibit 13 to the complaint. (R. 17a, 42a, and 43a.) They show that there was discussion as to whether the controversy was properly before the Committee; that the Chairman ruled it was properly before the Committee; and that no exception was taken thereto. They further show that the merits of the controversy were discussed in the Committee during an entire morning's session and at least part of the afternoon session, after which the decision was adopted, by a vote of 9 for and 2 against, to restore the jurisdiction of the mileage between Tamms and Cairo to Division 444. It is this decision of the General Committee of which respondent complains, and as to which it is alleged, on in-

formation, that the carrier "will accept the proposed modification or change" in the collective bargaining agreement. (R. 21a.)

The District Court, as heretofore noted, was of the opinion that the controversy was wholly within the Brotherhood and that no federal question was involved. The Court of Appeals reversed on the sole ground (App. p. 25) that the respondent "is entitled to a hearing on the merits with an opportunity to fully develop, by the introduction of evidence, the alleged illegal discrimination on the part of the Brotherhood," which alleged discrimination appears to be found (App. p. 21) in the charges in the complaint that "the proposed action is in defiance of the Constitution and by-laws of the Brotherhood; is a breach of fiduciary duty resting upon the Brotherhood and its officers to treat the members fairly and impartially and in accordance with the constitution and by-laws of the Brotherhood; will illegally discriminate against members of the Brotherhood belonging to Division 666 in favor of members belonging to Division 444, with the direct and immediate result of depriving the appellant (respondent) and others in his Division of existing seniority and of the regular employment which they have heretofore enjoyed; that the railroad will accept the proposed modification of the contract if requested * * *"; that the respondent has exhausted his remedies within the Brotherhood and has no administrative relief available to him; and that the threatened action by the Brotherhood, as stated in the complaint, "is an unfair, arbitrary, unauthorized and unlawful act of favoritism" which, it is alleged, violates Section 2 of the Railway Labor Act.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court of Appeals creates a new field of federal jurisdiction and interferes with proper collective bargaining in the railroad industry.

The decision of the Court of Appeals should be reviewed because it holds, in effect, that the jurisdiction of federal courts extends to an interference in the internal affairs of labor organizations which are craft representatives under the Railway Labor Act, and because of the consequent far-reaching and detrimental effects it will have on collective bargaining in that industry. If this decision stands, any member of a labor organization in the railroad industry may appeal to a federal court for a review of the action taken within the framework of his labor organization and decided by its tribunals adversely to his contentions, provided only that he shall allege that, if such decision of his labor organization is placed in effect as the result of negotiations with his carrier employer, there will thereby be hostile discrimination against him. Heretofore, so far as we are able to ascertain, no decision has held or recognized that such jurisdiction is to be found in the federal courts.

In this case there is no question concerning the right of the General Committee of the Brotherhood to act as the craft representative of the engineers on the G. M. & O. Railroad. There is no question as to its general right to negotiate with the carrier for changes in agreements concerning rates of pay, rules and working conditions of engineers. The sole question which is raised in this case is whether or not the laws of the Brotherhood of Locomotive Engineers have been followed in the various actions taken within its framework which resulted in the decision of the General Committee that the trackage, which had

formerly been under the jurisdiction of Division 444 and is presently under the jurisdiction of Division 666, should be restored to Division 444. In short, the question presented by the complaint is whether a controversy within the framework of the Brotherhood was correctly decided under Brotherhood law. But if the federal courts may inquire into the correctness of the action of the Brotherhood in the instant case, it would follow that every controversy from all of the railroads in all of the railroad labor organizations would be subject to review in those courts upon complaint of a member who alleged he would be aggrieved by such a decision.

It is well known to the court, from its consideration of previous labor cases arising under the Railway Labor Act, that there are approximately twenty of the so-called "standard" labor organizations, national in scope, in the railroad field. Five of these organizations, one of which is the Brotherhood of Locomotive Engineers, represent employees engaged in the operation of locomotives and trains who are sometimes referred to as "operating employees," while the others represent the "non-operating employees," that is, those engaged in shop, clerical, maintenance and other work not directly involved in the train operations. All of these organizations, pursuant to the direction of the Railway Labor Act, make agreements concerning rates of pay, rules and working conditions of the employees respectively represented by them with the carriers throughout the country. Separate agreements are made with each carrier for each craft, and there are 135 principal railroad carriers[1] which generally have agreements with respect to each craft employed on the railroad. As of

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[1] Twentieth Annual Report National Mediation Board for fiscal year ending June 30, 1954, p. 31.

June 30, 1954, there were 5157 of such working agreements, of which 4520 were held by organizations national in scope.[2] Controversies frequently arise between different members of these organizations, or between different groups or lodges of members, as to who is entitled to work, or how work is to be apportioned, as to the effect of various rules, such as those governing seniority, and how the same shall be applied, and in the case of mergers or consolidation of carriers or portion of their trackage, when usually various jobs are eliminated, how the remaining combined work is to be equitably divided between the employees of the carriers involved. Controversies such as these belong, and historically have been handled and decided, within the organization tribunals, after which negotiations are conducted with the carriers with the object of placing the organization decisions in effect.

We submit it is obvious that if the decision of the Court of Appeals is not reversed, the way is charted for every disgruntled member of a railway organization to go into the federal courts and have those courts inquire into the propriety of any decision made within the organization as a result of which the organization would seek a change in agreements with the carrier concerning rates of pay, rules and working conditions. A vast new field of federal jurisdiction would thus be available to inquire into the internal affairs of labor organizations where no such jurisdiction has heretofore existed. While the decision of the Court of Appeals in the instant case relates only to a controversy between two local divisions of the Brotherhood affecting operations on a short piece of track and directly affecting a job for only one engineer, the principle involved would extend to every member of labor organizations in

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[2] Id., p. 47.

the railroad field so as to permit them to seek injunctions in the federal courts to forbid negotiations with the carriers whenever the decisions of the organizations' tribunals were not to their liking.

We submit that the decision of the Court of Appeals should be reviewed to the end that this extension of jurisdiction to the federal courts to inquire into the internal affairs and decisions of these railway labor organizations, with the consequent interference with collective bargaining, should be stopped at the threshold.

2. There is no substantial federal question in the case.

The primary and fundamental question in this case is concerned only with the regularity or irregularity of procedural matters and the ultimate decision on the controversy within the framework of the Brotherhood. Substantially all of the complaint deals with the details of the Brotherhood action and decisions. These include the details of a referendum vote, the appeal to the supreme governing body or Convention of the Brotherhood, the action of the Convention in referring the matter back to the General Committee of Adjustment, the action of the General Committee in deciding the controversy between the two Divisions, and the decisions of the Grand Chief Engineer. It is significant that no exception is taken to the regularity or propriety of the decision of the supreme governing body of the Brotherhood, and the sole contention made concerning it is only that its decision was subsequently misinterpreted. Respondent's contention is set forth in paragraph 16 of the complaint (R. 19a, 20a) that:

> "The action of the General Committee of Adjustment and of the General Chairman in undertaking to effect this change in Section 11(d), and the ruling of the Grand Chief Engineer, flagrantly disregards the ruling

> of the highest body within the framework of the Brotherhood, and is in defiance of the constitution and by-laws of the Brotherhood, leaving your plaintiff with no other remedy to protect his rights than to seek the protection of this Court."

In all of these matters no question of Federal Constitution or Statutes is in any way involved or concerned. Hence, the federal courts would have no jurisdiction to decide whether the action within the organization was correct or in conformity with Brotherhood law.

Respondent has sought to bridge the gap between a non-federal question and federal question in this suit by contending that the alleged wrongful action within the Brotherhood would be discriminatory as "an unfair, arbitrary, unauthorized and unlawful act of favoritism" (R. 20a) if placed in effect on the railroad as the result of negotiations between the General Committee and the carrier. But the real grievance complained of is the alleged wrongfulness of the action within the Brotherhood which is in no way concerned with matters arising under the Constitution or laws of the United States. Although the decision of the General Committee has not been agreed to by the carrier, and the carrier is not a party to the litigation, the Court of Appeals accepted the conclusions alleged by the respondent concerning discrimination under the Railway Labor Act, and held that the District Court had jurisdiction to inquire into the entire matter.

There is here no question respecting the validity, construction or effect of a law of the United States upon the determination of which the result depends which is essential to federal jurisdiction. *Shulthis v. McDougal,* 225 U. S. 561, 569, *Gully v. First National Bank,* 299 U. S. 109, 112. On the contrary, in this case it is the construction or effect of the laws of the Brotherhood rather

than laws of the United States upon the determination of which the result depends.

3. The decision of the Court of Appeals is an unwarranted application and extension of the holding of this Court in Steele v. L. & N. Railroad Co., 323 U. S. 192, and has thereby raised an important question of federal law which should be settled by this Court.

The decision is in conflict with decisions of other Courts of Appeals.

The decision of the Court of Appeals is grounded upon the decision of this Court in the case of *Steele v. L. & N. R. Co.*, from which is quoted in the Court of Appeals opinion the following:

> "We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them."

The Court of Appeals further concludes that "hostile discrimination" is not limited to discrimination on account of race (Opinion p. 4), and assumes from the holding of this Court in *Ford Motor Company v. Huffman*, 345 U. S. 330, that it was not intended by the *Steele* case to limit "hostile discrimination" to race. Actually what was charged to be discrimination in the *Huffman* case turned out not to be discrimination at all—certainly not "hostile" discrimination. We submit that the *Huffman* case is not authority for any extension of the holding in the *Steele* case. It reaffirms and emphasizes the latitude which a bargaining agent has in negotiating agreements with employers and pointedly repeats that it is inevitable that differences will arise in

the manner in which the agreements affect different employees, and that "the mere existence of such differences does not make them invalid." (p. 338.)

We note that in these cases agreements had been entered into between the craft representative and the employer, whereas in the instant case there is no agreement with the carrier employer. However, if there were an agreement with the carrier effecting the change complained of by the respondent, we submit there would still be no basis for federal jurisdiction. The *Steele* case (p. 203) clearly and expressly recognizes the legal propriety of changes in agreements which may have adverse effects upon some employees, and the Court indicated the propriety of "variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in the conditions to which they are to be applied." A change in the contract based upon race was not such a change, and hence received the Court's disapproval.

But the alleged change which is contemplated in the instant case is of the type definitely relevant to railroad operation. It deals with a matter of seniority rights and the territory upon which they may be exercised, and the decision complained of was made after consideration of the claims of the contending parties. As heretofore shown, originally the track in question was under the jurisdiction of Division 444, and, with respect to freight work, was transferred to the jurisdiction of Division 666 by agreement with the carrier. Neither the respondent nor Division 666 complains of "relevancy" in the first transfer. The question involved in the return of trackage to the jurisdiction of Division 444 is identical in relevancy with that of the original transfer. Moreover, full and extensive discussions and consideration by the Brotherhood tribunals and committees, especially since there is no charge of

fraud, negatives any possible claim of hostile discrimination. Respondent contends for his own construction of the Convention decision as set forth in the complaint. The General Committee of Adjustment by a decisive vote of 7 to 2 interpreted the action differently. The Grand Chief Engineer placed a construction upon the language of the Convention decision in accord with that of the General Committee of Adjustment. At most the situation presents a difference of opinion. It does not present a question of hostile discrimination, or discrimination at all. But whatever else may be claimed with respect to it, it cannot be claimed that it involves the construction, validity, or effect of a federal law.

The instant case is not the first in which charges of discrimination or hostile discrimination have been made as a basis for federal jurisdiction under the Railway Labor Act, but it is the first case in which a Court of Appeals has approved jurisdiction on a ground of alleged discrimination, except in cases of racial discrimination, under the holding in the *Steele* case or the cases of *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen,* 323 U. S. 210, or *Brotherhood of Railroad Trainmen v. Howard,* 343 U. S. 768, the discrimination in all of those cases being based upon race, and therefore hostile.

In *Brotherhood of Locomotive Firemen and Enginemen v. Central of Georgia Railway Company, et al.* (C. A. 5), 199 F. 2d 384, *Spires, et al. v. Southern Railway Company* (C. A. 4) 204 F. 2d 453, and *Colbert v. Brotherhood of Railroad Trainmen, et al.* (C. A. 9), 206 F. 2d 9, it was sought to have the federal courts take jurisdiction as against the jurisdiction of the National Railroad Adjustment Board because of discrimination of one kind or another. In *BLF&E v. Central of Georgia* it was charged that

a hearing before the Adjustment Board would be an inadequate remedy because of the affiliations of members of that Board and would result in lack of due process. In *Spires v. Southern Railway Co.* the fact situation is strikingly similar to that in the instant case. An agreement had been made with the carrier reclassifying a certain job from road job to yard job, with a resulting change in the application of seniority of different groups of engineers. It was charged that the Brotherhood had acted "deliberately and maliciously." In *Colbert v. BRT* jurisdiction was sought upon the ground of hostile discrimination on the part of the Brotherhood. This case also is closely similar in its fact situation to the instant case. A new agreement had been entered into between the carrier and the Brotherhood merging the seniority of the men of two districts, that is, the seniority of men from one district, which seniority had been confined thereto, was combined with the seniority of men from another district whose seniority had previously been confined to that district, thereby making one seniority roster on which the men from the two districts were ranked according to their seniority dates on their former districts. In this case complaint was made by the plaintiffs that as a result of the merger they would ultimately have no jobs at all, and it was charged (Opinion p. 11) that the agreement between the carrier and the Brotherhood placed the older men in a "privileged category," was in violation of B. R. T. law and was the result of "arbitrary, capricious and fraudulent enactment."

In all three of the above cases, the plaintiffs relied upon *Steele v. L. & N. R. Co., supra,* as a basis for jurisdiction in the District Courts. The Courts of Appeals in those cases declined to take jurisdiction from the National Rail-

road Adjustment Board and affirmed holdings that the District Courts did not have jurisdiction. In both the *Spires* and *Colbert* cases, the *Steele* case was distinguished on the ground that it dealt only with racial discrimination, and the Courts of Appeals declined to extend the holding of the *Steele* case, where the racial discrimination was "obviously irrelevant and invidious," to situations where the agreements were clearly relevant to purposes of the collective contract and to employment in the craft involved. A writ of certiorari was not sought in *Spires v. Southern Railway Company*, but certiorari was denied in *BLF&E v. Central of Georgia Ry. Co.*, 345 U. S. 908, and in *Colbert v. BRT*, 346 U. S. 931. In substantial effect the decision of the Court of Appeals in the instant case is in conflict with the decisions of the Courts of Appeals in the three above discussed cases.

CONCLUSION.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.

APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Decided October 31, 1955.

Before McALLISTER, MILLER and STEWART, Circuit Judges.

MILLER, Circuit Judge. The Appellant, W. H. Mount, is a locomotive engineer in the employ of the Gulf, Mobile and Ohio Railroad Company. The Appellee, The Grand International Brotherhood of Locomotive Engineers, is an international unincorporated association whose membership is derived principally from locomotive engineers employed on interstate railroads, including the Gulf, Mobile and Ohio Railroad. The Brotherhood has been designated by the engineers of said railroad to act for them as their bargaining agent, pursuant to Section 2 of the Railway Labor Act, Section 152, Title 45, U. S. Code, and as such bargaining agent has negotiated on behalf of the engineers on said railroad a contract with the railroad with respect to pay, working conditions, seniority and other allied matters. The appellant seeks by this action to enjoin the Brotherhood from negotiating with the railroad a proposed amendment to this contract on the grounds that such action is an arbitrary and unfair discrimination against him and other engineers of the railroad. The complaint sets out the following facts:

The railroad has maintained seniority divisions in which a locomotive engineer has seniority preference rights for holding his job and for job assignments carrying more favored rates of pay and working conditions with respect to other engineers in the same seniority division. Appellant is a member of Division 666 of the Brotherhood, which division has certain geographical boundaries on the

railroad. Division 444 is a similar local of the Brotherhood also having certain geographical boundaries. In 1906, the Brotherhood negotiated a division of territorial rights in and around Cairo, Illinois, between Divisions 666 and 444, known as the Cairo Agreement, under which both divisions have operated for 48 years.

Over a period of years Division 444 attempted unsuccessfully within the Brotherhood to reopen the Cairo agreement for the purpose of changing the allocation of territorial rights. In 1917, it again brought up the question and attempted to obtain for its engineers a transfer of mileage between Tamms, Illinois, and North Cairo, Illinois, from Division 666 to Division 444, to which action Division 666 objected. Eventually a referendum vote of the members of the Brotherhood sustained the position of Division 666. On an appeal to the Grand Chief Engineer it was held that the referendum was legally held and the appeal denied. Division 444 thereupon appealed the ruling to the Triennial Convention of the Brotherhood held in Cleveland, Ohio, in June, 1950. This was an appeal of last resort within the framework of the Brotherhood. Its constitution provides that its "decisions upon all questions shall be the supreme law of the Brotherhood, and all Divisions and all members of the organization shall render true obedience thereto." The Convention sustained the decision of the Grand Chief Engineer and referred the matter back to the General Committee of Adjustment "for further handling."

The complaint alleges that notwithstanding the foregoing rulings, the Committee has notified Division 666 that it will negotiate an amendment to the contract between the employees and the railroad changing in favor of Division 444 certain trackage rights in the territory in

dispute heretofore allocated under the existing contract to Division 666.

The complaint further alleges that the proposed action is in defiance of the Constitution and By-Laws of the Brotherhood; is a breach of the fiduciary duty resting upon the Brotherhood and its officers to treat the members fairly and impartially and in accordance with the constitution and by-laws of the Brotherhood; will illegally discriminate against the members of the Brotherhood belonging to Division 666 in favor of the members of the Brotherhood belonging to Division 444, with the direct and immediate result of depriving the appellant and others in his division of existing seniority and of the regular employment which they have heretofore enjoyed; that the railroad will accept the proposed modification of the contract if requested because it does not affect or prejudice its rights or interest and involves a matter over which the railroad does not attempt to exercise control; that the appellant has exhausted every remedy available to him within the framework of the constitution and by-laws; that he has no administrative relief available to him; that the threatened action by the Brotherhood "is an unfair, arbitrary, unauthorized and unlawful act of favoritism" and violates Section 2 of the Railway Labor Act; and that unless the Court grants relief he will suffer irreparable injury.

The appellee filed a motion to dismiss, and also an answer, in which as a third defense it alleged that the Court lacked jurisdiction of the subject matter, in that (1) the complaint presented no question arising under the Constitution and laws of the United States, and (2) there was no diversity of citizenship between the parties. The District Judge held that the third defense set forth

in the answer was a good defense to the action and entered judgment dismissing the same, from which this appeal was taken.

Appellants rely upon *Steele v. L. & N. R. Co.*, 323 U. S. 192 and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210. Those cases, involving racial discrimination, hold that the Railway Labor Act imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination, and that the courts have jurisdiction to protect the minority of the craft or class against the violation of such obligation. The opinion in the *Steele* case stated the rule as follows: "While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier to represent non-union or minority members of the craft without hostile discrimination, fairly, impartially, and in good faith. Wherever necessary to that end, the union is required to consider requests of non-union members of the craft and expressions of their views with respect to collective bargaining with the employer and to give them notice of an opportunity for hearing upon its proposed action."

Appellee contends that those cases were based upon discrimination on account of race and are not controlling on the present case where discrimination of that type is not involved. We are of the opinion that the cases are not so limited. It is true that the particular discrimination involved in those cases was based upon race, but the rulings are based upon the broad principle that the Railway

Labor Act prohibits "hostile discrimination" between members of the craft, irrespective of whether it is based on race or some other ground, unrelated to race, In *Steele v. L. & N. R. Co., supra,* the Court stated the rule in broad, inclusive terms, as follows: "We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them" (pp. 202-203). "Hostile discrimination" is not limited to discrimination on account of race. See dissenting opinion of Justice Minton in *Brotherhood of Railroad Trainmen v. Howard,* 343 U. S. 768, 776.

In *Ford Motor Co. v. Huffman,* 345 U. S. 330, at p. 337, the Supreme Court, relying principally upon *Steele v. L. & N. R. Co., supra,* and *Tunstall v. Brotherhood, etc., supra,* again stated that the authority of bargaining representatives is not absolute and that they have a statutory obligation to serve the interest of all the members "without hostility to any." The ruling in that case was not based on the fact that the alleged discrimination was not racial, but on the fact that the alleged discrimination by reason of military service was not unreasonable or unfair.

We are of the opinion that if the Brotherhood is engaging in hostile discrimination against a portion of the membership of the craft, without a good faith representation of the entire membership of the craft, in making contracts with the carrier, the employee so discriminated against has a cause of action arising under a law regulating commerce, under which the federal courts are given

jurisdiction by Section 1337, Title 28, U. S. Code. *Tunstall vs. Brotherhood, supra,* p. 213.

There are a number of cases, of which several are cited by appellee, holding that seniority is a matter of contract rather than a right guaranteed by the Railway Labor Act, and that the courts lack jurisdiction to construe or interpret a bargaining agreement made pursuant to the provisions of that Act. *Slocum, etc. vs. Delaware, L. & W. R. Co.,* 339 U. S. 239; *Colbert vs. Brotherhood of Railroad Trainmen,* 206 F. (2d) 9, C. A. 9th; *Spires vs. Southern Ry. Co.,* 204 F. (2d) 453, C. A. 4th; *Starke vs. New York, Chicago & St. L. R. Co.,* 180 F. (2d) 569, C. A. 7th. See also: *Lewellyn v. Fleming,* 154 F. (2d) 211, C. A. 10th. This is not a case involving the construction or interpretation of the collective bargaining agreement. As was pointed out in *Brotherhood of Railroad Trainmen vs. Howard,* 343 U. S. 768, at p. 774: "This dispute involves the validity of the contract, not its meaning." In this case, as in that case, the employees "must look to a judicial remedy to prevent the sacrifice or obliteration of their rights under the Act."

In this case it may be that the charge of illegal discrimination in the proposed action by the Brotherhood will not be sustained by a full consideration of the evidence upon a hearing. That involves the merits of the claim, not a question of jurisdiction. We do not question the settled rule that the statutory representative of a craft under the Act is not barred from making contracts which may have unfavorable effects on some of the members of the craft represented, including a change in seniority rights, where such change or resulting discrimination is made in good faith and is based upon relevant differences. *Steele vs. L. & N. R. Co., supra,* 323 U. S. 192, 203; *Ford Motor Co. vs. Huffman, supra,* 345

U. S. 330, 338; *Division 525, etc. vs. Gorman,* 133 F. (2d) 273, C. A. 8th. Our present ruling is confined to merely holding that the appellant is entitled to a hearing on the merits with an opportunity to fully develop by the introduction of evidence the alleged illegal discrimination on the part of the Brotherhood.

We do not agree with appellee's contention that the action is premature, in that the proposed contract has not been executed. A person does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough. *Pennsylvania vs. West Virginia,* 262 U. S. 553, 592-593, 263 U. S. 350; *Standard Oil Co. of New Mexico vs. Standard Oil Co. of California,* 56 F. (2d) 973, 976, C. A. 10th; *Graham vs. Tom Moore Distillery Co.,* 42 F. Supp. 853, W. D. Ky. See *Seagrave Corp. vs. Mount,* 212 F. (2d) 389, C. A. 6th.

The complaint contains a fairly complete statement of the history of the controversy, sets out the ruling of the Triennial Convention in its favor, and alleges that notwithstanding that final ruling the General Committee of Adjustment is preparing to execute a contract which "flagrantly disregards the ruling of the highest body within the framework of the Brotherhood and is in defiance of the Constitution and By-Laws of the Brotherhood." The additional allegations that the proposed action of the Brotherhood is an unfair, arbitrary and unlawful act of favoritism on the part of the General Committee of Adjustment is more than a mere conclusion of the pleader and presents a factual issue for determination by the District Court.

The judgment of the District Court is reversed and the case is remanded for further proceedings consistent with the views expressed herein.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Filed October 31, 1955.)

Appeal from the District Court of the United States for the Western District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the case remanded to the District Court for further proceedings consistent with the views expressed in the opinion herein.

EXCERPTS FROM RAILWAY LABOR ACT.

45 U. S. C. A. 151ff.

§ 151a.

GENERAL PURPOSES.

The purposes of this chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.

§ 152.

GENERAL DUTIES—Duty of carriers and employees to settle disputes.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. * * *

FILED
JAN 30 1956
HAROLD B. WILLEY, Clerk

No. 600

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

THE GRAND INTERNATIONAL BROTHERHOOD
OF LOCOMOTIVE ENGINEERS,
Petitioner,

vs.

W. H. MOUNT,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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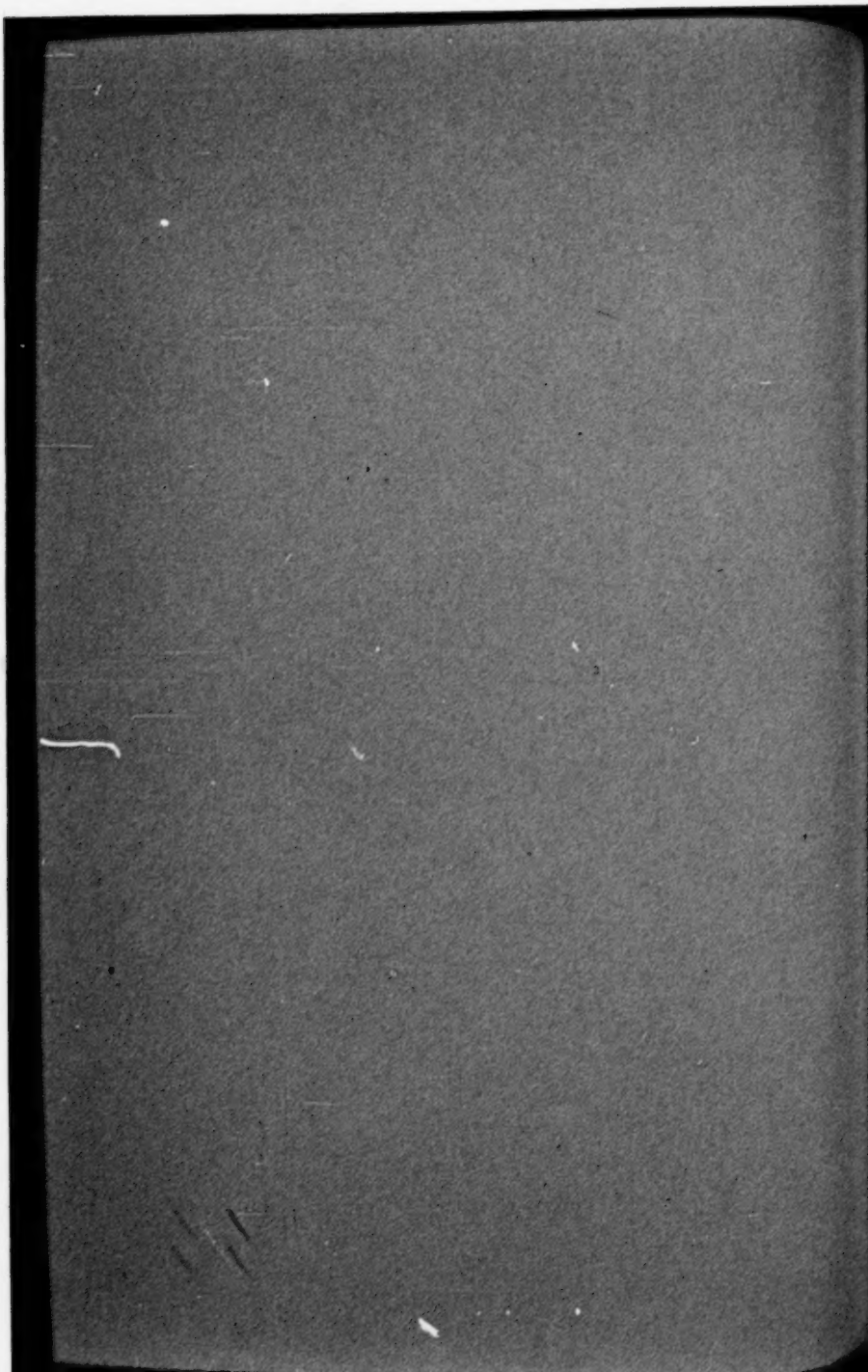

TABLE OF AUTHORITIES

CASES

Hargrove vs. Brotherhood of Locomotive Engineers, 116 Fed. Supp. page 3

Huffman vs. Ford Motor Co., 195 Fed. (2d) 170 and 345 U. S. 330

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Tunstall vs. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210

Virginian R. R. Co. vs. System, etc., 300 U. S. 515

STATUTES

Title 28, Secs. 1331-1337

Title 45, Secs. 151-152

United States Code

No. 600

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OCTOBER TERM, 1955

THE GRAND INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Petitioner,

vs.

W. H. MOUNT,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondent, W. H. Mount, respectfully shows unto this Court that no cause exists for the granting of the petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, for the reason that, (1) The decision of the United States Court of Appeals in this case is not in conflict with any decision of another United States Court of Appeals on the same matter. (2) There is no extension of the field of federal jurisdiction, as is alleged by the petition for Writ of Certiorari, and the Court of Appeals for the Sixth Circuit has not decided, in this case, any important question of Federal Law which has not been settled

by this Court. (3) The question presented by the petition for the Writ of Certiorari has heretofore been decided by this Court adversely to the contention of the petitioner. (4) No other grounds for granting Certiorari are present.

POINTS OF LAW

I.

A District Court of the United States is vested with jurisdiction to entertain and determine cases arising under any Act of Congress regulating commerce.

U. S. Code Title 28, Sec. 1337.

II.

The Railway Labor Act is an Act of Congress regulating commerce.

U. S. Code, Title 45, Secs. 151-152.

III.

District Courts of the United States are vested with jurisdiction, by virtue of the Railway Labor Act, of civil actions where the aggrieved party has been the victim of **"hostile discrimination,"** in the collective bargaining process.

Steel vs. L. & N. Railroad Co., 323 U. S. 192;

Tunstall vs. Brotherhood, 323, U. S. 210;

Ford Motor Company vs. Huffman, 343 U. S. 330.

IV.

"Hostile discrimination," as defined in the opinions

of the Supreme Court of the United States, is not limited or confined to discrimination based upon race.

Tunstall vs. Brotherhood, Supra;

Ford Motor Company vs. Huffman, Supra.

V.

Discriminatory provisions in a contract of employment by the statutory representative of a craft under the Railway Labor Act must be made in good faith and based on relevant differences.

Steel vs. L. & N. Railroad, Supra;

Ford Motor Company vs. Huffman, Supra;

Division 525, etc. vs. Gorman, 133 F. (2d) 273, C. A. 8th.

BRIEF AND ARGUMENT

The District Court of the United States for the Western District of Tennessee dismissed the action brought by the Respondent for lack of jurisdiction. There was no trial of the case on the merits. The Circuit Court of Appeals for the Sixth Circuit reversed and remanded the case.

QUESTIONS PRESENTED

The sole question presented upon the appeal in the Circuit Court of Appeals for the Sixth Circuit in these proceedings was as follows:

Did the Respondent, W. H. Mount, in his complaint together with the exhibits thereto, allege a cause of

action arising under the laws of the United States regulating commerce?

ARGUMENT

It is the position of the Respondent herein that the complaint and exhibits thereto, states a cause of action arising under an Act of Congress regulating commerce; to wit: The Railway Labor Act. In this connection the Respondent refers to the statement of facts contained in the opinion of the Court of Appeals. See appendix to Petition for Certiorari, pages 19-25.

We may point out here that under the existing Federal Rules of Civil Procedure (Rule 8) a plaintiff is only required in his complaint to allege a short and plain statement of the grounds upon which the Court's jurisdiction depends and a short and plain statement of the grounds showing that the pleader is entitled to relief. He is not required to plead the details of his action.

The Court of Appeals has expressed, in its opinion, so well the allegations of the complaint that we here repeat them:

> "The complaint further alleges that the proposed action is in defiance of the Constitution and By-Laws of the Brotherhood; is a breach of the fiduciary duty resting upon the Brotherhood and its officers to treat the members fairly and impartially and in accordance with the constitution and by-laws of the Brotherhood; will illegally discriminate against the members of the Brotherhood belonging to Division 666 in favor of the members

of the Brotherhood belonging to Division 444, with the direct and immediate result of depriving the appellant and others in his division of existing seniority and of the regular employment which they have heretofore enjoyed; that the railroad will accept the proposed modification of the contract it requested because it does not affect or prejudice its rights or interest and involves a matter over which the railroad does not attempt to exercise control; that the appellant has exhausted every remedy available to him within the framework of the constitution and by-laws; that he has no administrative relief available to him; that the threatened action by the Brotherhood "is an unfair, arbitrary, unauthorized and unlawful act of favoritism" and violates Section 2 of the Railway Labor Act; and that unless the Court grants relief he will suffer irreparable injury."

"The complaint contains a fairly complete statement of the history of the controversy, sets out the ruling of the Triennial Convention in its favor, and alleges that notwithstanding that final ruling the General Committee of Adjustment is preparing to execute a contract which "flagrantly disregards the ruling of the highest body within the framework of the Brotherhood and is in defiance of the Constitution and By-Laws of the Brotherhood." The additional allegations that the proposed action of the Brotherhood is an unfair, arbitrary and unlawful act of favoritism on the part of the General Committee of Adjustment is more than a mere conclusion of the pleader and presents a factual issue for determination by the District Court."

We submit that the complaint presented sufficient allegations of the grounds upon which the Court's jurisdiction depended, and of the claim which he has against the petitioner, to support the jurisdiction of the Court. The complaint alleged the existence of precisely

that state of facts which this Court held, in the case of **Tunstall vs. Brotherhood, Supra,** would vest a District Court of the United States with jurisdiction. It was for the very reason that "hostile discrimination" existed that this Court granted relief in the **Tunstall** case. The only distinction between the cases is that the discrimination in the **Tunstall** case was based upon race, whereas, the distinction in the case at bar is based upon another equally irrelevant and hostile factor. That "hostile discrimination" can be based upon other factors than race was expressly asserted and established by this Court in the case of **Ford Motor Company vs. Huffman, Supra,** (which was reversed on its merits for the reason that the evidence showed that the discrimination was based upon relevant differences, but not for lack of jurisdiction).

In view of the above, the Respondent respectfully submits that the Petition for Writ of Certiorari is insufficent and therefore should be denied by this Honorable Court.

Respectfully submitted

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